



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MND, MNR, MNSD, FF
Tenant: MNSD, FF

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

One of the landlords and the tenant attended the conference call hearing. Both parties provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The parties both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All evidence and testimony have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

This month-to-month tenancy began on May 1, 2010 and ended on July 8, 2011. The tenant testified that the tenant actually moved from the rental unit on July 6, 2011 but returned to clean the rental unit on July 7 and July 8, 2011. The keys to the rental unit were left on July 8, 2011.

Rent in the amount of \$750.00 per month was payable in advance on the 1st day of each month. The tenant testified that on April 2, 2010 the landlord collected a security deposit from the tenant in the amount of \$375.00. However, evidence provided by the parties show that on May 11, 2010 the landlords collected a security deposit from the tenant in the amount of \$368.50. No move-in or move-out condition inspection reports were completed.

The tenant testified that in April, 2011 the tenant spoke to the landlord about an ant infestation in the rental unit, and again the parties spoke about it in May, 2011. The landlord did nothing about it until June 12, 2011, at which time the landlords left ant bait on the washer for the tenant's use.

The tenant further testified that in May, 2011 the tenant told the landlord that the tenant was looking for another place to live. The tenant found a place the weekend of June 26, 2011. On June 28, 2011 the tenant verbally told the landlord that the tenant was moving. There was no written tenancy agreement, and nothing was in writing. However, on June 29, 2011 the tenant received a letter from the landlord stating that the tenant had to be out of the rental unit by July 1, 2011. A copy of that letter was provided by the landlord in advance of the hearing, and it states that the tenant failed to give the landlords one month's notice to end the tenancy, but the landlords' decision was that if the tenant did not intend to pay rent for July, then the tenant must make arrangements to vacate the premise by 12:00 PM July 1, 2011. The tenant could not move by July 1, 2011 and the tenant told the landlords that the unit would be vacated within the first week of July, and they could keep the security deposit for the week's rent and they could start to advertise the unit for rent. On July 8, 2011 the tenant left a forwarding address in writing inside the rental unit.

The tenant further testified that a couch was left behind because the movers would not put it in the moving truck due to the ant infestation in it.

While the tenant still had possession of the rental unit, he landlord wanted to show the rental unit on 20 minute's notice to the tenant. The tenant agreed and 3 people attended to see the unit. The unit was re-rented in July and the landlord told the tenant that the new tenants were using the couch left behind and it had been moved outside.

The tenant further testified that the photographs provided by the landlord show that any items left behind by the tenant were taken outside before they were photographed. The tenant left behind a crock-pot, still in the box, which was a forgotten item and not intended to be left behind, as well as a large jar. The tenant stated that the rental unit was left in a clean condition, and the photographs provided by the landlord do not show the condition that the tenant left the rental unit in. Also, the landlords did not file for

dispute resolution for 6 weeks after the tenancy ended, which gave the landlords plenty of time to cause the damages claimed and shown in the photographs. The tenant is not sure whether or not the photographs of the oven and fridge are even the appliances that were in the rental unit. Other photographs provided by the landlords don't show what house they're in; they're not identifiable and therefore, the tenant feels the landlords have failed to prove the condition of the unit after the tenancy ended in comparison to the unit before the tenant moved in.

The landlord testified that in March, 2011 the tenant told the landlord that the tenant would be moving in the summer to be closer to daycare. The landlord told the tenant that one month's notice in writing was required, but the tenant did not give any written notice. Nothing was mentioned to the landlords about ants until May 25, 2011. On June 28, 2011 the tenant told the landlords that a new place was located and the tenant would be taking it for July 1, 2011 because it was closer to daycare. The tenant then stated that more time was needed and offered the landlords the security deposit.

The landlord also testified that the unit was advertised on Craig's List and some interest was shown. The unit was shown on June 29, 2011, but the next time interested perspective renters wanted to see the suite, the tenant insisted on 24 hours written notice. The landlords advised the tenant that if they were able to re-rent the unit for the month of July, 2011, the tenant would not be required to pay rent for that month and the tenant would get back the security deposit. The tenant then allowed showings without the 24 hours written notice. The unit was re-rented on July 22, 2011.

The landlord further testified that on July 6, 2011 the landlord saw the tenant's friend moving items from the rental unit. On July 7, the landlord could see through the windows that the tenant was not finished moving. On July 8, 2011 the landlord went into the rental unit and the tenant's items were gone with the exception of the couch, microwave and crock-pot. The rental unit had not been cleaned and the landlords spent 2 nights cleaning with 2 other people. The other people were paid \$100.00 in total to assist, and the landlords did the rest. The landlord's photographs depict a home that has not been cleaned; the fridge, oven and floors are not clean and crayon marks appear on the walls and baseboards. The landlord also testified that a family member of the landlord had also been in the rental unit when the tenant resided there and commented to the landlord that the tenant should be told to clean the apartment, and the landlord responded that it's the tenant's home.

The landlord also testified that a notice was sent to the tenant on July 10, 2011 asking the tenant to return to clean the unit. A copy of that letter was also provided in advance

of the hearing, and it states that items were still in the apartment, the tenant had not paid rent for July, 2011, and the apartment had not been cleaned. The landlords request in the letter that the tenant remove the items and clean the apartment.

Analysis

In this case, I find that neither the landlord nor the tenant is in compliance with the *Residential Tenancy Act*. The *Act* specifies that the tenant must provide one month's written notice to the landlord of the tenant's intention to vacate the rental unit, and the notice must be received by the landlord the day before the day rent is payable. The tenant did not give any written notice, and therefore, the landlord is entitled to a monetary order for rent for the month of July, 2011 up until the unit was re-rented on July 22, 2011. In determining the amount, one month of rent is equivalent to \$24.19 per day in a month that has 31 days, which amounts to \$507.99 for the first 21 days of the month.

The *Act* also states that the landlord must return the security deposit in full or apply for dispute resolution claiming against the deposit within 15 days of the later of the date the tenancy ends or the date the tenant provides a forwarding address in writing. If the landlord fails to do either, the landlord must be ordered to pay the tenant double the amount of the security deposit or pet damage deposit if applicable. I find that the tenancy ended on July 8, 2011 and the tenant provided a forwarding address in writing the same day. The landlords did not file for dispute resolution until August 30, 2011. Therefore, I must find that the tenant is entitled to double recovery of the security deposit. Although the tenant testified that the security deposit was \$375.00, I find that the evidence proves that the landlords collected \$368.50 and double that is \$737.00.

The *Act* also states that if the landlord fails to cause a move-in and a move-out condition inspection to take place, the landlords' right to claim against the security deposit for damages is extinguished. I am satisfied in the evidence that no move-in or move-out condition inspection reports were completed. That does not, however, prevent the landlords from making a claim for damages.

I have reviewed the photographs provided by the parties, and I accept the evidence of the landlord that the tenant did not leave the rental unit reasonably clean. I have no evidence before me to support the tenant's claim that the rental unit was infested with ants. The landlords' claim includes \$375.00 for expenses to clean the rental unit. In order to be successful in a claim for damages, the onus is on the claiming party to prove the 4-part test for damages:

1. That the damage or loss exists;

2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss;
4. What efforts the claiming party made to mitigate, or reduce the damage or loss.

The *Act* states that a tenant must leave a rental unit reasonably clean and undamaged except for normal wear and tear. I also accept the landlord's evidence that the tenant was provided with a letter requesting the tenant to return to clean the rental unit, and has therefore attempted to mitigate the damages or loss suffered. I find that the landlord has satisfied elements 1, 2 and 4, however, I have no evidence before me to substantiate \$375.00 in damages. I accept the evidence of the landlord that the landlords paid \$100.00 to other persons to clean the rental unit, and in the circumstances, I find that the landlords' time to clean is also worth \$100.00.

In summary, I find that the landlords are owed rent in the amount of \$507.99. The tenant is entitled to double recovery of the security deposit, or \$737.00. The landlords are also entitled to \$200.00 for cleaning the rental unit.

Since both parties have been partially successful in their claims, I decline to order that either party recover the filing fee for the cost of these applications.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$29.01. This order is final and binding on the parties and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 28, 2011.

Residential Tenancy Branch